IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 99 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIR OF SONI PARSHOTTAM POPAT GOKALDAS P SONI

Versus

SHANTABEN V SONI, WD/O POPAT BHAGWANJI

Appearance:

MR PV HATHI for Petitioner

MR JR NANAVATI for Respondent No. 1

No one has appeared on behalf of other respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/11/2000

ORAL JUDGEMENT

1. This Appeal is directed against the order dated 3.5.80 passed by the Civil Judge (S.D.), Jamnagar in C.M. No.20/75. The respondent No.1 herein filed an Application seeking probate in pursuance of will of the properties of the deceased Soni Popatbhai Kanthadbhai. The applicant Soni Shantaben Vallabhdas's father in law,

namely, Popatbhai Kanthadbhai died on 15.12.74. Said Shri Popatbhai Kanthadbhai had executed a will in favour of the applicant on or about 19.6.74 and the will was registered. Movable and immovable properties of her father in law were and are in possession and custody of Soni Parshottam Popat, who was opponent No.1 in the Application seeking probate. It was alleged by the applicant that these properties had been mismanaged. The applicant says that her father in law through the aforesaid will had made her the sole owner in respect of self acquired properties and that she was entitled to a Certificate as prayed for. The deceased father in law of the applicant had two sons and three daughters, out of whom her husband had died. His five sons are there and they have declared their consent to the claim being granted in her favour. The mother in law had already died. It was prayed that succession certificate or letter of administration or any certificate admissible under the law in respect of the properties shown in Schedule "A' of deceased Popatbhai Kanthadbhai be granted in applicant's favour with costs from the contestant, if any. This Application was contested by opponent No.1, who filed the written statement Exh.18 on 21.6.75 contending that until the applicant obtains the probate of the so called will dated 19.6.74 she is not entitled to make such an Application. He came with the case that Popatbhai Kanthadbhai used to stay with him at Bhanvad and that it was not true that the will, as alleged, had been executed by the deceased in favour of the applicant. It was also pleaded that if the applicant and her companions had taken signature in writing, taking advantage of the old age of Popatbhai Kanthadbhai, it would not be treated to be legal will. It was also denied that the property was in possession and custody of opponent No.1, namely, Soni Parshottam Popat and that whatever properties were in his possession and custody were self acquired one. It was also stated that the deceased was retired person since 20 years. There was a Joint Hindu Undivided Family of the opponent, opponent's sons and the deceased and that the applicant was not entitled to inherit any right or share in the properties in question.

2. Upon the pleadings of the parties in this Application, issues as under were framed and the findings were recorded as indicated against the issues as under:-

"1. Whether applicant proves that her father in law has executed one will in her favour on 19.6.74? - In the affirmative.

2. Whether opponent No.1 proves that present application is not tenable?
- In the negative.

3. Whether applicant is entitled to get the relief as sought for?
- In the affirmative.

4. What final order?
- As per final graph and order."

3. After considering the material and evidence on record, the Court came to the conclusion that one of the two attesting witnesses had duly proved the attestation of the will and hence the omission of the examination of the second attesting witness on the part of the applicant was not fatal to the prayer of the applicant and looking to the nature and manner of defence of opponent No.1, the Court held that it had no hesitation in holding on the strength of the evidence adduced by the applicant that the applicant had duly proved will Exh.48 to be genuine. On this basis, issue No.1 was answered in affirmative and issue No.2 was answered in negative and, therefore, with regard to issue No.3 it was held that the applicant was entitled to probate of will Exh.48. In view of the finding on issue Nos.1 to 3 as above, the Application was allowed so far as grant of probate is concerned and it was ordered that the probate be issued in the name and in favour of the applicant in respect of the property shown in Schedule "A' annexed to the application, upon the applicant submitting due and requisite court fees stamps and on production of estate duty clearance certificate as condition precedent.

4. Mr. P.V.Hathi, learned counsel for the appellant, has submitted that it is unbelievable that any person would pass on his properties to his daughter in law in preference to sons and, therefore, the original applicant's case should not have been believed. The argument, as has been raised, is not tenable and cannot be accepted. In a given case a person may choose to give his self acquired properties to his daughter in law in preference to the other sons. It cannot be considered an impossibility that any father in law may give his self acquired properties to his daughter in law.

5. I have heard learned counsel and have gone through the judgment and the available record. I find myself to be in agreement with the view taken by the trial court and find that the reasoning, on the basis of which issues have been decided by the trial court, do not

suffer from any infirmity. The order cannot be said to be bad either on facts or in the eye of law and the will having been found to be proved as the last and genuine will executed by the father in law of the original applicant, it cannot be said that the present appellant has any tenable ground to assail the impugned order.

6. It was also given out by the learned counsel for both the sides that parties had approached them and had also got the Draft of the settlement approved way back in the year 1995 and, thereafter, they have never turned up. Therefore, both the learned counsel say that the parties may have settled the matter between them but they do not have any positive information from the respective parties.

7. In any case, this Court does not find any merit in this Appeal. The same is hereby dismissed. In the facts and circumstances of this case, no order as to costs.

(M.R.Calla,J)